

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 201

HOUSE BILL 2090

AN ACT

AMENDING SECTIONS 23-902, 23-947, 23-961, 23-1047, 23-1061, 23-1065, 23-1081
AND 32-1451, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-902, Arizona Revised Statutes, is amended to
3 read:

4 23-902. Employers subject to chapter; exceptions

5 A. Employers subject to the provisions of this chapter are the state,
6 each county, city, town, municipal corporation and school district and every
7 person who ~~has in his employ~~ EMPLOYS any workers or operatives regularly
8 employed in the same business or establishment under contract of hire, except
9 domestic servants. Exempted employers of domestic servants may come under
10 the provisions of this chapter by complying with its provisions and the rules
11 of the commission. For the purposes of this subsection "regularly employed"
12 includes all employments, whether continuous throughout the year, or for only
13 a portion of the year, in the usual trade, business, profession or occupation
14 of an employer.

15 B. When an employer procures work to be done for him THE EMPLOYER by
16 a contractor over whose work he THE EMPLOYER retains supervision or control,
17 and such THE work is a part or process in the trade or business of the
18 employer, then such THE contractors and the persons ~~employed by him~~
19 CONTRACTOR'S EMPLOYEES, and his THE subcontractor and persons ~~employed by the~~
20 subcontractor THE SUBCONTRACTOR'S EMPLOYEES, are, within the meaning of this
21 section, employees of the original employer. For the purposes of this
22 subsection, "part or process in the trade or business of the employer" means
23 a particular work activity that in the context of an ongoing and integral
24 business process is regular, ordinary or routine in the operation of the
25 business or is routinely done through the business' own employees.

26 C. A person engaged in work for a business, and who while so engaged
27 is independent of that business in the execution of the work and not subject
28 to the rule or control of the business for whom WHICH the work is done, but
29 is engaged only in the performance of a definite job or piece of work, and
30 is subordinate to that business only in effecting a result in accordance with
31 that business design, is an independent contractor.

32 D. A business that uses the services of an independent contractor and
33 the independent contractor may prove the existence of an independent
34 contractor relationship by executing a written agreement that complies with
35 this subsection. The written agreement shall evidence that the business does
36 not have the authority to supervise or control the actual work of the
37 independent contractor or the independent contractor's employees. A written
38 agreement executed in compliance with this subsection creates a rebuttable
39 presumption of an independent contractor relationship between the parties if
40 the written agreement contains a disclosure statement that the independent
41 contractor is not entitled to workers' compensation benefits from the
42 business. Unless the rebuttable presumption is overcome, no premium may be
43 collected by the carrier on payments by the business to the independent
44 contractor if a fully completed written agreement that satisfies the
45 requirements of this subsection is submitted to the carrier. The written

1 agreement shall be dated and contain the signatures of both parties and,
2 unless otherwise provided by law, shall state that the business:

3 1. Does not require the independent contractor to perform work
4 exclusively for the business. This paragraph shall not be construed as
5 conclusive evidence that an individual who performs services primarily or
6 exclusively for another person is an employee of that person.

7 2. Does not provide the independent contractor with any business
8 registrations or licenses required to perform the specific services set forth
9 in the contract.

10 3. Does not pay the independent contractor a salary or hourly rate
11 instead of an amount fixed by contract.

12 4. Will not terminate the independent contractor before the expiration
13 of the contract period, unless the independent contractor breaches the
14 contract or violates the laws of this state.

15 5. Does not provide tools to the independent contractor.

16 6. Does not dictate the time of performance.

17 7. Pays the independent contractor in the name appearing on the
18 written agreement.

19 8. Will not combine business operations with the person performing the
20 services rather than maintaining these operations separately.

21 E. A business that uses the services of a sole proprietor who has
22 waived his THE SOLE PROPRIETOR'S rights to workers' compensation coverage and
23 benefits pursuant to section 23-961, subsection ~~t~~ M is not liable for
24 workers' compensation coverage or the payment of premiums for the sole
25 proprietor.

26 F. The written agreement executed in compliance with subsection D of
27 this section shall be null and void and create no presumption of an
28 independent contractor relationship if the consent of either party is either:

29 1. Obtained through misrepresentation, false statements, fraud or
30 intimidation.

31 2. Obtained through coercion or duress.

32 G. ~~Where~~ IF any agreement is found to be null and void under this
33 subsection F OF THIS SECTION the insurance carrier is entitled to collect a
34 premium.

35 Sec. 2. Section 23-947, Arizona Revised Statutes, is amended to read:
36 23-947. Time within which hearing must be requested; definition

37 A. A hearing on any question relating to a claim shall not be granted
38 unless the employee has previously filed an application for compensation
39 within the time and in the manner prescribed by section 23-1061, ~~and such~~
40 THE request for a hearing is filed within ninety days after the notice sent
41 under the ~~provisions of~~ section 23-1061, subsection F or within ninety days
42 of notice of a determination by the commission, insurance carrier or
43 self-insuring employer under section 23-1047 or 23-1061, except that an
44 employer who is subject to and fails to comply with section 23-961 or 23-962
45 must file a request for A hearing within thirty days of notice of a

1 determination by the commission, or within ten days of all other awards
2 issued by the commission.

3 B. As used in this section, "filed" means that the request for A
4 hearing is in the possession of the commission. Failure to file with the
5 commission within the required time by a party means that the determination
6 by the commission, insurance carrier or self-insuring employer is final and
7 res judicata to all parties. The industrial commission or any court shall
8 not excuse a late filing unless any of the following applies:

9 1. The person to whom the notice is sent does not request a hearing
10 because of justifiable reliance on a representation by the commission,
11 employer or carrier. In this paragraph, "justifiable reliance" means that
12 the person to whom the notice is sent has made reasonably diligent efforts
13 to verify the representation, regardless of whether the representation is
14 made pursuant to statutory or other legal authority.

15 2. At the time the notice is sent the person to whom it is sent is
16 suffering from insanity or legal incompetence or incapacity, including
17 minority.

18 3. The person to whom the notice is sent shows by clear and convincing
19 evidence that the notice was not received.

20 C. The late filing shall not be excused under subsection B of this
21 section if the person to whom the notice is sent or his THE PERSON'S legal
22 counsel knew or, with the exercise of reasonable care and diligence, should
23 have known of the fact of the notice at any time during the filing period.
24 ~~The late filing shall not be excused under subsection B of this section if~~
25 ~~it is shown by clear and convincing evidence that the notice was sent by mail~~
26 ~~or delivered personally to the last known mailing address or place of~~
27 ~~residence of the person to whom it is addressed and to his legal counsel, as~~
28 ~~shown on the records of the commission.~~

29 Sec. 3. Section 23-961, Arizona Revised Statutes, is amended to read:

30 23-961. Methods of securing compensation by employers; deficit
31 premium

32 A. Employers shall secure workers' compensation to their employees in
33 one of the following ways:

34 1. By insuring and keeping insured the payment of such compensation
35 with the state compensation fund or an insurance carrier authorized by the
36 director of insurance to write workers' compensation insurance in this state.

37 2. By furnishing to the commission satisfactory proof of financial
38 ability to pay the compensation directly or through a workers' compensation
39 pool approved by the commission in the amount and manner and when due as
40 provided in this chapter. The requirements of this paragraph may be
41 satisfied by furnishing to the commission satisfactory proof that the
42 employer is a member of a workers' compensation pool approved by the
43 commission pursuant to section 23-961.01. The commission may require a
44 deposit or any other security from the employer for the payment of
45 compensation liabilities in an amount fixed by the commission, but not less

1 than one hundred thousand dollars for workers' compensation liabilities. If
2 the employer does not fully comply with the provisions of this chapter
3 relating to the payment of compensation, the commission may revoke the
4 authority of the employer to pay compensation directly.

5 B. AN EMPLOYER MAY NOT SECURE COMPENSATION TO COMPLY WITH THIS CHAPTER
6 BY ANY MECHANISM OTHER THAN AS PROVIDED IN THIS SECTION. NO INSURANCE,
7 COMBINATION OR OTHER PROGRAM MAY BE MARKETING, OFFERED OR SOLD AS WORKERS'
8 COMPENSATION THAT DOES NOT COMPLY WITH THIS SECTION. AN EMPLOYER VIOLATES
9 THIS CHAPTER IF AN EMPLOYER PURCHASES OR SECURES ITS OBLIGATIONS UNDER THIS
10 CHAPTER THROUGH A SUBSTITUTE FOR WORKERS' COMPENSATION THAT DOES NOT COMPLY
11 WITH THIS SECTION.

12 ~~B.~~ C. Corporations or associations transacting the business of
13 workers' compensation insurance in the state shall be subject to the rules
14 of the director of insurance, including rates to be charged and policy forms
15 to be used. Their liability shall include a reinsurance reserve which shall
16 equal sixty-five per cent of the gross annual premiums or deposits received
17 by the corporation or association on account of workers' compensation
18 insurance, and fifty per cent of the gross annual premiums on all other lines
19 of insurance and a pro rata amount of gross premiums collected for more than
20 one year.

21 ~~C.~~ D. Before transacting such business, the corporation or
22 association and the state compensation fund shall deposit with the state
23 treasurer, through the director of insurance, cash or securities in an amount
24 equal to the greater of the following amounts:

- 25 1. One hundred thousand dollars.
26 2. The sum of subdivisions (a) and (b) of this paragraph less credits
27 for approved reinsurance computed as of the preceding December 31 for
28 workers' compensation insurance written subject to the laws of this state:

29 (a) The aggregate of the present values at six per cent interest of
30 the determined and estimated future direct reported loss and loss expense
31 payments on compensation claims incurred more than three years immediately
32 before the preceding December 31.

33 (b) The aggregate of the amounts determined for each of the three
34 years immediately before the preceding December 31 which equals the greater
35 of the following:

36 (i) Sixty-five per cent of the earned premiums for the year less all
37 direct reported loss and loss expense payments made on compensation claims
38 incurred in the corresponding year.

39 (ii) The present value at six per cent interest of the determined and
40 estimated future direct reported loss and loss expense payments on
41 compensation claims incurred in that year.

42 ~~D.~~ E. Securities deposited pursuant to subsection ~~C.~~ D of this
43 section are subject to approval by the director of insurance at all times.
44 In lieu of cash or securities the corporation or association may, with the
45 annual approval of the commission, furnish a bond of a corporate surety

1 company authorized to transact business in the state. The bond or securities
2 shall be held by the director of insurance as security for fulfillment of the
3 obligations of the corporation or association under this chapter.

4 ~~E.~~ F. Except in the event of nonpayment of premiums, each insurance
5 carrier shall carry a risk to the conclusion of the policy period unless the
6 policy is cancelled by the employer. The policy period shall be agreed upon
7 by the insurance carrier and the employer.

8 ~~F.~~ G. At least thirty days' notice shall be given by the insurance
9 carrier to the employer and to the commission of any cancellation or
10 nonrenewal of a policy if the cancellation or nonrenewal is at the election
11 of the insurance carrier. The insurance carrier shall promptly notify the
12 commission of any cancellation by the employer or failure of the employer to
13 renew the policy. The failure to give notice of nonrenewal if the nonrenewal
14 is at the election of the insurance carrier shall not extend coverage beyond
15 the policy period. ~~The employer shall, prior to the effective date of any~~
16 ~~cancellation or nonrenewal, file a certificate with the commission~~
17 ~~designating his new insurance carrier or other satisfactory proof of~~
18 ~~compliance with the requirements of this section.~~ An insurance carrier shall
19 notify the commission on a form prescribed by the commission that it has
20 insured an employer for workers' compensation promptly after undertaking to
21 insure the employer.

22 ~~G.~~ H. Every insurance carrier, including the state compensation fund,
23 shall on or before March 1 of each year pay to the state treasurer for the
24 credit of the administrative fund, in lieu of all other taxes on workers'
25 compensation insurance, a tax of not more than three per cent on all premiums
26 collected or contracted for during the year ending December 31 next
27 preceding, less the deductions from such total direct premiums for applicable
28 cancellations, returned premiums and all policy dividends or refunds paid or
29 credited to policyholders within this state and not reapplied as premiums for
30 new, additional or extended insurance. Every self-insured employer,
31 including workers' compensation pools, shall on or before March 31 of each
32 year pay a tax of not more than three per cent of the premiums which would
33 have been paid by the employer if he THE EMPLOYER had been fully insured
34 under a plan available from the state compensation fund during the preceding
35 calendar year. The commission shall adopt rules which shall specify those
36 methods to be used for the calculation of rates and premiums and which shall
37 be the basis for the taxes assessed to self-insured employers. The tax shall
38 be not less than two hundred fifty dollars per annum and shall be computed
39 and collected by the commission and paid to the state treasurer for the
40 credit of the administrative fund at a rate not exceeding three per cent to
41 be fixed annually by the industrial commission. The rate shall be no more
42 than is necessary to cover the actual expenses of the industrial commission
43 in carrying out its powers and duties under this title. Any quarterly
44 payments of tax pursuant to subsection ~~H-~~ I of this section shall be deducted
45 from the tax payable pursuant to this subsection.

~~H.~~ I. Any insurer which, pursuant to this section, paid or is required to pay a tax of two thousand dollars or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection ~~G~~ H of this section for premiums determined pursuant to subsection ~~G~~ H of this section or an amount equal to twenty-five per cent of the tax paid or required to be paid pursuant to subsection ~~G~~ H of this section for the preceding calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

~~I.~~ J. ~~Beginning February 1, 1986,~~ If an overpayment of taxes results from the method prescribed in subsection ~~H~~ I of this section the industrial commission may refund the overpayment without interest.

~~J.~~ K. An insurer who fails to pay the tax prescribed by subsection ~~G~~ H or ~~H~~ I of this section or the amount prescribed by section 23-1065, subsection A is subject to a civil penalty equal to the greater of twenty-five dollars or five per cent of the tax or amount due plus interest at the rate of one per cent per month from the date the tax or amount was due.

~~K.~~ L. Neither the state compensation fund nor an insurance carrier authorized to write workers' compensation insurance may assess an employer premiums for services provided by a contractor alleged to be an employee under the provisions of section 23-902, subsection B or C, unless the fund or carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under section 23-902 have been met.

2. Provided a copy of such findings to the employer in advance of assessing a premium.

~~L.~~ M. Notwithstanding section 23-901, paragraph 5, subdivision (i), a sole proprietor may waive his THE SOLE PROPRIETOR'S rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver which is substantially in the following form:

"I am a sole proprietor, and I am doing business as name of sole proprietor. I am performing work as an independent contractor for name of employer. I am not the employee of name of employer for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from name of employer. I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.

Sole proprietor

Date

Insurance carrier

Date

Sec. 4. Section 23-1047, Arizona Revised Statutes, is amended to read:

23-1047. Procedure for determining compensation for partial disability and permanent total disability in cases not enumerated; procedure for determining nonscheduled dependency and duration of compensation to partial dependents in death cases

A. In cases of permanent partial disability under the provisions of paragraph 22 of subsection B and subsections C, and F of section 23-1044, SUBSECTION B, PARAGRAPH 22 AND SUBSECTIONS C AND F, when the physical condition of the injured employee becomes stationary, or in the case of permanent total disability not enumerated in section 23-1045, and under the provisions of SECTION 23-1045, subsection D thereof, or in death cases under the provisions of subsection B of section 23-1046, SUBSECTION B, the employer or insurance carrier within thirty days shall so notify the commission and request that the claim be examined and further compensation, if any, be determined. A copy of all medical reports necessary to make such determination also shall be furnished to the commission. The employer or insurance carrier may commence payment of a permanent disability award without waiting for a determination under subsection B of this section.

B. Within thirty days after the commission receives the medical reports, the claims shall be examined and further compensation, including A permanent disability award, if any, determined under the commission's supervision. If necessary, the commission may require additional medical or other information with respect to the claim and may postpone the determination for not more than sixty additional days. Any determination under this subsection may include necessary adjustments in any compensation paid or payable.

C. The commission shall mail a copy of the determination to all interested parties. Any such party may request a hearing under section 23-941 on the determination made under subsection B of this section within sixty NINETY days after copies of the determination are mailed.

D. Any person receiving permanent compensation benefits shall report annually on the anniversary date of the award to the self-insured employer or insurance carrier all of his THE PERSON'S earnings for the prior twelve-month period. In the event the person fails to make such report the self-insured employer or insurance carrier shall notify the person that such report has not been received and that payment of further benefits will be suspended unless such report of earnings is filed within thirty days. After thirty days has HAVE elapsed from the date of such notice, the self-insured employer or insurance carrier may issue a notice to the person suspending payment of further benefits and no further payments need be made until such report of earnings is filed.

1 E. Any person receiving permanent compensation benefits from the
2 special fund established by section 23-1065 shall report annually on the
3 anniversary date of the award to the industrial commission all of his THE
4 PERSON'S earnings for the prior twelve-month period. In the event the person
5 fails to make such report the industrial commission shall notify the person
6 that such report has not been received and that payment of further benefits
7 will be suspended unless such report of earnings is filed within thirty days.
8 After thirty days has HAVE elapsed from the date of such notice, the
9 industrial commission may issue a notice to the person suspending payment of
10 further benefits and no further payments need be made until such report of
11 earnings is filed.

12 Sec. 5. Section 23-1061, Arizona Revised Statutes, is amended to read:

13 23-1061. Notice of accident; form of notice; claim for
14 compensation; reopening; payment of compensation

15 A. Notwithstanding section 23-908, subsection D, no claim for
16 compensation shall be valid or enforceable unless the claim is filed with the
17 commission by the employee, or if resulting in death by the parties entitled
18 to compensation, or someone on their behalf, in writing within one year after
19 the injury occurred or the right thereto accrued. The time for filing a
20 compensation claim begins to run when the injury becomes manifest or when the
21 claimant knows or in the exercise of reasonable diligence should know that
22 the claimant has sustained a compensable injury. Except as provided in
23 subsection B of this section, neither the commission nor any court shall have
24 jurisdiction to consider a claim which is not timely filed under this
25 subsection, except if the employee or other party entitled to file the claim
26 has delayed in doing so because of justifiable reliance on a material
27 representation by the commission, employer or insurance carrier or if the
28 employee or other party entitled to file the claim is insane or legally
29 incompetent or incapacitated at the time the injury occurs or the right to
30 compensation accrues or during the one-year period thereafter. If the
31 insanity or legal incompetence or incapacity occurs after the one-year period
32 has commenced, the running of the remainder of the one-year period shall be
33 suspended during the period of insanity or legal incompetence or incapacity.
34 If the employee or other party is insane or legally incompetent or
35 incapacitated when the injury occurs or the right to compensation accrues,
36 the one-year period commences to run immediately upon the termination of
37 insanity or legal incompetence or incapacity. The commission upon receiving
38 a claim shall give notice to the carrier.

39 B. Failure of an employee or any other party entitled to compensation
40 to file a claim with the commission within one year or to comply with the
41 provisions of section 23-908 shall not bar a claim if the insurance carrier
42 or employer has commenced payment of compensation benefits under the
43 provisions of section 23-1044, 23-1045 or 23-1046, except that the payments
44 provided for by section 23-1046, subsection A, paragraph 1 and section

1 23-1065, subsection A shall not be considered compensation benefits for the
2 purposes of this section.

3 C. If the commission receives a notification of the injury, the
4 commission shall send a claim form to the employee.

5 D. The issue of failure to file a claim must be raised at the first
6 hearing on a claim for compensation in respect to the injury or death.

7 E. Within ten days after receiving notice of an accident, the employer
8 shall inform his insurance carrier and the commission on such forms as may
9 be prescribed by the commission.

10 F. Each insurance carrier and self-insuring employer shall report to
11 the commission a notice of the first payment of compensation and shall
12 promptly report to the commission and to the employee by mail at his last
13 known address any denial of a claim, any change in the amount of compensation
14 and the termination thereof, except that claims for medical, surgical and
15 hospital benefits which are not denied shall be reported to the commission
16 in the form and manner determined by the commission. In all cases where
17 compensation is payable, the carrier or self-insuring employer shall promptly
18 determine the average monthly wage pursuant to section 23-1041. Within
19 thirty days of the payment of the first installment of compensation, the
20 carrier or self-insuring employer shall notify the employee and commission
21 of the average monthly wage of the claimant as calculated, and the basis for
22 such determination. The commission shall thereupon THEN make its own
23 independent determination of the average monthly wage pursuant to section
24 23-1041. The commission shall within thirty days after receipt of such
25 notice notify the employee, employer and carrier of such determination. The
26 amount determined by the commission shall be payable retroactive to the first
27 date of entitlement. The first payment of compensation shall be accompanied
28 by a notice on a form prescribed by the commission stating the manner in
29 which the amount of compensation was determined.

30 G. Except as otherwise provided by law, the insurance carrier or
31 self-insuring employer shall process and pay compensation and provide
32 medical, surgical and hospital benefits, without the necessity for the making
33 of an award or determination by the commission.

34 H. An employee may reopen the employee's claim to secure an increase
35 or rearrangement of compensation or additional benefits by filing with the
36 commission a petition requesting the reopening of the employee's claim upon
37 the basis of a new, additional or previously undiscovered temporary or
38 permanent condition, which petition shall be accompanied by a statement from
39 a physician setting forth the physical condition of the employee relating to
40 the claim. A claim shall not be reopened because of increased subjective
41 pain if the pain is not accompanied by a change in objective physical
42 findings. A claim shall not be reopened solely for additional diagnostic or
43 investigative medical tests, but expenses for any reasonable and necessary
44 diagnostic or investigative tests that are causally related to the injury
45 shall be paid by the employer or the employer's insurance carrier. Expenses

1 for reasonable and necessary medical and hospital care and laboratory work
2 shall be paid by the employer or the employer's insurance carrier if the
3 claim is reopened as provided by law and if these expenses are incurred
4 within fifteen days after OF the date that the petition to reopen is filed.
5 The payment for such reasonable and necessary medical, hospital and
6 laboratory work expense shall be paid for by the employer or the employer's
7 insurance carrier if the claim is reopened as provided by law and if such
8 expenses are incurred within fifteen days of the filing of the petition to
9 reopen. Surgical benefits are not payable for any period prior to the date
10 of filing of a petition to reopen, except that surgical benefits are payable
11 for a period prior to the date of filing the petition to reopen not to exceed
12 seven days if a bona fide medical emergency precludes the employee from
13 filing a petition to reopen prior to the surgery. No monetary compensation
14 is payable for any period prior to the date of filing the petition to reopen.

15 I. Upon the filing of a petition to reopen a claim the commission
16 shall in writing notify the employer's insurance carrier or the self-insuring
17 employer, which shall in writing notify the commission and the employee
18 within twenty-one days after the date of such notice of its acceptance or
19 denial of the petition. The reopened claim shall be processed thereafter in
20 like manner as a new claim.

21 J. The commission shall investigate and review any claim in which it
22 appears to the commission that the claimant has not been granted the benefits
23 to which such claimant is entitled. If the commission determines that
24 payment or denial of compensation is improper in any way, it shall hold a
25 hearing pursuant to section 23-941 within sixty days after receiving notice
26 of such impropriety.

27 K. When there is a dispute as to which employer, or insurance carrier,
28 is liable for the payment of a compensable claim, the commission may, by
29 order, designate the employer or insurance carrier which shall pay the claim.
30 Payment shall begin within fourteen days after the employer or insurance
31 carrier has been ordered by the commission to commence payment. When a final
32 determination has been made as to which employer or insurance carrier is
33 actually liable, the commission shall direct any necessary monetary
34 adjustment or reimbursement among the parties or carriers involved.

35 L. Upon application to the commission, and for good cause shown, the
36 commission may direct that a document filed as a claim for compensation
37 benefits be designated as a petition to reopen, effective as of the original
38 date of filing. In like manner upon application and good cause shown the
39 commission may direct that a document filed as a petition to reopen be
40 designated a claim for compensation benefits, effective as of the original
41 date of filing.

42 M. If the insurance carrier or self-insurer does not issue a notice
43 of claim status denying the claim within twenty-one days from the date the
44 carrier is notified by the commission of a claim or of a petition to reopen,
45 the carrier shall pay immediately compensation as if the claim were accepted,

1 from the date the carrier is notified by the commission of a claim or
2 petition to reopen until the date upon which the carrier issues a notice of
3 claim status denying such claim. Compensation includes medical, surgical and
4 hospital benefits. This section shall not apply to cases involving seven
5 days or less of time lost from work.

6 Sec. 6. Section 23-1065, Arizona Revised Statutes, is amended to read:

7 23-1065. Special fund; purposes; investment committee

8 A. The industrial commission may direct the payment into the state
9 treasury of not to exceed one and one-half per cent of all premiums received
10 by the state compensation fund and private insurance carriers during the
11 immediately preceding calendar year. The same percentage shall be assessed
12 against self-insurers based on the total cost to the self-insured employer
13 as provided in section 23-961, subsection G- H. Such assessments shall be
14 computed on the same premium basis as provided for in section 23-961,
15 subsections G, H, I, and J AND K and shall be no more than is necessary to
16 keep the special fund actuarially sound. Such payments shall be placed in
17 a special fund within the administrative fund to provide, at the discretion
18 of the commission, such additional awards as may be necessary to enable
19 injured employees to accept the benefits of any law of the state or of the
20 United States, or both jointly, for promotion of vocational rehabilitation
21 of persons disabled in industry.

22 B. In claims involving an employee who has a preexisting
23 industrially-related permanent physical impairment of the type specified in
24 section 23-1044, subsection B and who thereafter suffers an additional
25 permanent physical impairment of the type specified in such subsection, the
26 claim involving the subsequent impairment is eligible for reimbursement, as
27 provided by subsection D of this section, according to the following:

28 1. The employer in whose employ the subsequent impairment occurred or
29 its insurance carrier is solely responsible for all temporary disability
30 compensation to which the employee is entitled and for an amount equal to the
31 permanent disability compensation provided by section 23-1044, subsection B
32 for the subsequent impairment. If the employee is determined to have
33 sustained no loss of earning capacity after the medically stationary date,
34 the employer or carrier shall pay him as a vocational rehabilitation bonus
35 the amount calculated under this paragraph as a lump sum, which shall be a
36 credit against any permanent compensation benefits awarded in any subsequent
37 proceeding. The amount of the vocational rehabilitation bonus for which the
38 employer or carrier is responsible under this paragraph shall be calculated
39 solely on physical, medically rated permanent impairment and not on
40 occupational or other factors.

41 2. If the commission determines that the employee is entitled to
42 compensation for loss of earning capacity under the provisions of section
43 23-1044, subsection C or permanent total disability under section 23-1045,
44 subsection B, the total amount of permanent benefits for which the employer
45 or carrier is solely responsible under paragraph 1 of this subsection shall

1 be expended first, with monthly payments made according to the loss of
2 earning capacity or permanent total disability award. The employer or
3 carrier and the special fund are equally responsible for the remaining amount
4 of compensation for loss of earning capacity under section 23-1044,
5 subsection C or permanent total disability under section 23-1045, subsection
6 B. This paragraph shall not be construed as requiring payment of any
7 benefits under section 23-1044, subsection B in any case in which an employee
8 is entitled to benefits for loss of earning capacity under section 23-1044,
9 subsection C or permanent total disability benefits under section 23-1045,
10 subsection B.

11 C. In claims involving an employee who has a preexisting physical
12 impairment which is not industrially-related and, whether congenital or due
13 to injury or disease, is of such seriousness as to constitute a hindrance or
14 obstacle to employment or to obtaining reemployment if the employee becomes
15 unemployed, and the impairment equals or exceeds a ten per cent permanent
16 impairment evaluated in accordance with the American medical association
17 guides to the evaluation of permanent impairment, and the employee thereafter
18 suffers an additional permanent impairment not of the type specified in
19 section 23-1044, subsection B, the claim involving the subsequent impairment
20 is eligible for reimbursement, as provided by subsection D of this section,
21 under the following conditions:

22 1. The employer in whose employ the subsequent impairment occurred or
23 its carrier is solely responsible for all temporary disability compensation
24 to which the employee is entitled.

25 2. The employer had knowledge of the permanent impairment at the time
26 the employee was hired, or that the employee continued in employment after
27 the employer acquired such knowledge.

28 3. The employee's preexisting impairment is due to one or more of the
29 following:

- 30 (a) Epilepsy.
- 31 (b) Diabetes.
- 32 (c) Cardiac disease.
- 33 (d) Arthritis.
- 34 (e) Amputated foot, leg, arm or hand.
- 35 (f) Loss of sight of one or both eyes or a partial loss of uncorrected
36 vision of more than seventy-five per cent bilaterally.
- 37 (g) Residual disability from poliomyelitis.
- 38 (h) Cerebral palsy.
- 39 (i) Multiple sclerosis.
- 40 (j) Parkinson's disease.
- 41 (k) Cerebral vascular accident.
- 42 (l) Tuberculosis.
- 43 (m) Silicosis.
- 44 (n) Psychoneurotic disability following treatment in a recognized
45 medical or mental institution.

- 1 (o) Hemophilia.
- 2 (p) Chronic osteomyelitis.
- 3 (q) Hyperinsulinism.
- 4 (r) Muscular dystrophies.
- 5 (s) Arteriosclerosis.
- 6 (t) Thrombophlebitis.
- 7 (u) Varicose veins.
- 8 (v) Heavy metal poisoning.
- 9 (w) Ionizing radiation injury.
- 10 (x) Compressed air sequelae.
- 11 (y) Ruptured intervertebral disk.

12 4. The employer or carrier and the special fund are equally
13 responsible for the amount of compensation for loss of earning capacity under
14 section 23-1044, subsection C or permanent total disability under section
15 23-1045, subsection B.

16 D. The employer or insurance carrier shall notify the commission of
17 its intent to claim reimbursement for an eligible claim under subsection B
18 or C of this section not later than the time the employer or insurance
19 carrier notifies the commission pursuant to section 23-1047, subsection A.
20 Upon receiving notice the commission may expend funds from the special fund
21 created by this section for travel and discovery procedures and for the
22 employment of such independent legal, medical, rehabilitation, claims or
23 labor market consultants or experts as may be deemed necessary by the
24 commission to assist in the determination of the liability of the special
25 fund, if any, under subsection B or C of this section. In the event there
26 is any dispute regarding liability to the special fund pursuant to subsection
27 B or C of this section, the commission shall not delay the issuance of a
28 permanent award pursuant to section 23-1047, subsection B.

29 E. If the special fund created by this section is determined to be
30 liable under either subsection B or C of this section, the employer or
31 insurance carrier which is primarily liable shall pay the entire amount of
32 the award to the injured employee and the commission shall by rule provide
33 for the reimbursement of the employer or insurance carrier on an annual
34 basis. In any case arising out of subsection B or C of this section, the
35 written approval of the special fund is required for the compromise of any
36 claim made pursuant to section 23-1023. In any such case, written approval
37 shall not be unreasonably withheld by the special fund, carrier, self-insured
38 employer or other person responsible for the payment of
39 compensation. Failure to obtain the written approval of the special fund
40 shall not cause the injured worker to lose any benefits but ends the special
41 fund's liability for reimbursement and makes the employer or carrier solely
42 responsible for the payment of the remaining benefits.

43 F. The employer or insurance carrier shall make its claim for
44 reimbursement to the commission no later than November 1 each year, for
45 payments made pursuant to subsection B or C of this section during the twelve

months prior to October 1 each year. Claims shall be paid before December 31 each year. If the total annual reserved liabilities of the special fund obligated under subsections B and C of this section exceed six million dollars, as determined by the annual actuarial study performed pursuant to subsection H of this section, the commission may, after notice and a hearing, levy an additional assessment under subsection A of this section of up to one-half per cent to meet such liabilities. Any insurance carrier or employer who may be adversely affected by the additional assessment may at any time prior to the sixtieth day after such additional assessment is ordered file a complaint challenging the validity of the additional assessment in the superior court in Maricopa county for a judicial review of the additional assessment. On judicial review the determination of the commission shall be upheld if supported by substantial evidence in the record considered as a whole.

G. In the event the injured employee is awarded additional compensation, under the provisions of subsection A of this section, the commission retains jurisdiction to amend, alter or change the award upon a change in the physical condition of the injured employee resulting from the injury.

H. The commission shall cause an annual actuarial study of the special award fund to be made by a qualified actuary who is a member of the society of actuaries. The actuary shall make specific recommendations for maintaining the fund on a sound actuarial basis. The actuarial study shall be completed on or before September 1.

I. The special fund of the commission consists of all monies from premiums and assessments, except penalties assessed pursuant to this chapter, received and paid into the fund, property and securities acquired by the use of monies in the fund, interest earned on monies in the fund and other monies derived from the sale, use or lease of properties belonging to the fund. The special fund created by this section shall be administered by the director of the industrial commission, subject to the authority of the industrial commission. The director of the commission with approval of the investment committee may, in the administration of the special fund, provide loans, subject to repayment, budgetary review and legislative appropriation, to the administrative fund for the purposes and subject to the provisions of section 23-1081, acquire real property and acquire or construct a building or other improvements on the real property as may be necessary to house, contain, furnish, equip and maintain offices and space for departmental and operational facilities of the commission. The commission when using space constructed pursuant to this section shall make equal payments of rent on a semiannual basis which shall be deposited in the special fund. The investment committee shall determine the amount of the rent which must be at least equal to or greater than that determined by the joint committee on capital review for buildings of similar design and construction as provided by section 41-792.01.

1 J. There is established an investment committee consisting of the
2 director and the chairman of the commission and three persons knowledgeable
3 in investments and economics appointed by the governor. Of the members
4 appointed by the governor, one shall be a professional in the investment
5 business, one shall represent workers' compensation insurers, and one shall
6 represent self-insurers. The term of members appointed by the governor is
7 three years which shall begin on July 1 and end on June 30 three years later.
8 The committee shall prescribe by rule investment policies and supervise the
9 investment activities of the special fund.

10 K. Each member of the investment committee, other than the director
11 of the commission, is eligible to receive from the special fund:

12 1. Compensation of fifty dollars for each day while in actual
13 attendance at meetings of the investment committee.

14 2. Reimbursement for expenses pursuant to title 38, chapter 4,
15 article 2.

16 L. The investment committee shall meet at least once every month.

17 M. The investment committee shall periodically review and assess the
18 investment strategy.

19 N. The investment committee may, by resolution, invest and reinvest
20 the surplus or reserves in the funds established under this chapter in any
21 legal investments authorized under section 38-719.

22 O. In addition to the investments authorized under section 38-719, the
23 investment committee may approve the investment in real property and
24 improvements on real property to house and maintain offices of the
25 commission, including spaces for its departmental and operational facilities.
26 Title to the real estate and improvements on the real estate vests in the
27 special fund of the commission, and the assets become part of the fund as
28 provided by this section.

29 P. The investment committee may appoint a custodian for the
30 safekeeping of all or any portion of the investments owned by the special
31 fund of the commission and may register stocks, bonds and other investments
32 in the name of a nominee. Except for investments held by a custodian or in
33 the name of a nominee, all securities purchased pursuant to subsection N of
34 this section shall promptly be deposited with the state treasurer as
35 custodian thereof, who shall collect the dividends, interest and principal
36 thereof, and pay, when collected, into the special fund. The state treasurer
37 shall pay all vouchers drawn for the purchase of securities. The director
38 may sell any of the securities as the director deems appropriate, if
39 authorized by resolution of the investment committee, and the proceeds
40 therefrom shall be payable to the state treasurer for the account of the
41 special fund upon delivery of the securities to the purchaser or the
42 purchaser's agent.

1 Sec. 7. Section 23-1081, Arizona Revised Statutes, is amended to read:
2 23-1031. Administrative fund; purposes and administration

3 A. The administrative fund is established to provide for all expenses
4 of the industrial commission in carrying out its powers and duties under the
5 provisions of this title. Except for monies from cash deposits or surety
6 bonds in the separate account established by section 23-527, the
7 administrative fund and expenditures therefrom shall be subject to budgetary
8 review and legislative appropriation as expenditures from other state funds.
9 Vouchers or claims prepared for any purpose other than for payment of
10 benefits shall be processed as prescribed by section 35-181.01 and the rules
11 of the director of the department of administration. The industrial
12 commission shall annually fix the rate of the tax, not to exceed three per
13 cent, to be paid to the state treasurer for credit to the administrative fund
14 pursuant to section 23-961, subsection G- H in an amount that is no more than
15 necessary to cover the actual expenses of the industrial commission in
16 carrying out its powers and duties under this title. Monies for expenditure
17 from the administrative fund shall be appropriated by the legislature. All
18 money and securities in the fund shall be held in trust and invested by the
19 treasurer.

20 B. The administrative fund shall be no less than self-supporting with
21 respect to the expenses of the industrial commission and other expenditures
22 from the administrative fund as provided under this chapter. Any surplus or
23 deficit in the revenue provided under section 23-961 above or below the
24 expenses of the industrial commission and other expenditures from the
25 administrative fund as provided under this chapter shall be included in the
26 calculation of the rate to be fixed for the following year pursuant to
27 section 23-961, subsection G- H.

28 Sec. 8. Section 32-1451, Arizona Revised Statutes, is amended to read:

29 32-1451. Grounds for disciplinary action; duty to report;
30 immunity; proceedings; board action; notice
31 requirements

32 A. The board on its own motion may investigate any evidence that
33 appears to show that a doctor of medicine is or may be medically incompetent,
34 is or may be guilty of unprofessional conduct or is or may be mentally or
35 physically unable safely to engage in the practice of medicine. On written
36 request of a complainant the board shall review a complaint that has been
37 administratively closed by the executive director and take any action it
38 deems appropriate. Any person may, and a doctor of medicine, the Arizona
39 medical association, a component county society of that association and any
40 health care institution shall, report to the board any information that
41 appears to show that a doctor of medicine is or may be medically incompetent,
42 is or may be guilty of unprofessional conduct or is or may be mentally or
43 physically unable safely to engage in the practice of medicine. The board
44 or the executive director shall notify the doctor as to the content of the
45 complaint as soon as reasonable. Any person or entity that reports or

1 provides information to the board in good faith is not subject to an action
2 for civil damages. If requested, the board shall not disclose the name of
3 a person who supplies information regarding a licensee's drug or alcohol
4 impairment. It is an act of unprofessional conduct for any doctor of
5 medicine to fail to report as required by this section. The board shall
6 report any health care institution that fails to report as required by this
7 section to that institution's licensing agency.

8 B. The chief executive officer, the medical director or the medical
9 chief of staff of a health care institution shall inform the board if the
10 privileges of a doctor to practice in that health care institution are
11 denied, revoked, suspended or limited because of actions by the doctor that
12 appear to show that the doctor is or may be medically incompetent, is or may
13 be guilty of unprofessional conduct or is or may be mentally or physically
14 unable to safely engage in the practice of medicine, along with a general
15 statement of the reasons, including patient chart numbers, that led the
16 health care institution to take the action. The chief executive officer, the
17 medical director or the medical chief of staff of a health care institution
18 shall inform the board if a doctor under investigation resigns or if a doctor
19 resigns in lieu of disciplinary action by the health care institution.
20 Notification shall include a general statement of the reasons for the
21 resignation, including patient chart numbers. The board shall inform all
22 appropriate health care institutions in this state as defined in section
23 36-401 and the Arizona health care cost containment system ADMINISTRATION of
24 a resignation, denial, revocation, suspension or limitation, and the general
25 reason for that action, without divulging the name of the reporting health
26 care institution. A person who reports information in good faith pursuant
27 to this subsection is not subject to civil liability.

28 C. The board or, if delegated by the board, the executive director
29 shall require any combination of mental, physical or oral or written medical
30 competency examinations and conduct necessary investigations including
31 investigational interviews between representatives of the board and the
32 doctor to fully inform itself with respect to any information filed with the
33 board under subsection A of this section. These examinations may include
34 biological fluid testing. The board or, if delegated by the board, the
35 executive director may require the doctor, at the doctor's expense, to
36 undergo assessment by a board approved rehabilitative, retraining or
37 assessment program.

38 D. If the board finds, based on the information it receives under
39 subsections A and B of this section, that the public health, safety or
40 welfare imperatively requires emergency action, and incorporates a finding
41 to that effect in its order, the board may order a summary suspension of a
42 license pending proceedings for revocation or other action. If the board
43 takes this action it shall also serve the licensee with a written notice that
44 states the charges and that the licensee is entitled to a formal hearing
45 before the board or an administrative law judge within sixty days.

1 E. If, after completing its investigation, the board finds that the
2 information provided pursuant to subsection A of this section is not of
3 sufficient seriousness to merit disciplinary action against the license of
4 the doctor, the board or a board committee may take either of the following
5 actions:

6 1. Dismiss if, in the opinion of the board, the information is without
7 merit.

8 2. File an advisory letter. The licensee may file a written response
9 with the board within thirty days after receiving the advisory letter.

10 F. If the board finds that it can take rehabilitative or disciplinary
11 action without the presence of the doctor at a formal interview it may enter
12 into a consent agreement with the doctor to limit or restrict the doctor's
13 practice or to rehabilitate the doctor, protect the public and ensure the
14 doctor's ability to safely engage in the practice of medicine. The board may
15 also require the doctor to successfully complete a board approved
16 rehabilitative, retraining or assessment program.

17 G. If after completing its investigation the board believes that the
18 information is or may be true, it may request a formal interview with the
19 doctor. If the doctor refuses the invitation or accepts and the results
20 indicate that grounds may exist for revocation or suspension of the doctor's
21 license for more than twelve months, the board shall issue a formal complaint
22 and order that a hearing be held pursuant to title 41, chapter 6, article 10.
23 If after completing a formal interview the board finds that the protection
24 of the public requires emergency action, it may order a summary suspension
25 of the license pending formal revocation proceedings or other action
26 authorized by this section. If after completing the formal interview the
27 board finds the information provided under subsection A of this section is
28 not of sufficient seriousness to merit suspension for more than twelve months
29 or revocation of the license, it may take the following actions:

30 1. Dismiss if, in the opinion of the board, the information is without
31 merit.

32 2. File an advisory letter. The licensee may file a written response
33 with the board within thirty days after the licensee receives the advisory
34 letter.

35 3. File a letter of reprimand.

36 4. Issue a decree of censure. A decree of censure is an official
37 action against the doctor's license and may include a requirement for
38 restitution of fees to a patient resulting from violations of this chapter
39 or rules adopted under this chapter.

40 5. Fix a period and terms of probation best adapted to protect the
41 public health and safety and rehabilitate or educate the doctor concerned.
42 Probation may include temporary suspension for not to exceed twelve months,
43 restriction of the doctor's license to practice medicine, a requirement for
44 restitution of fees to a patient or education or rehabilitation at the
45 licensee's own expense. If a licensee fails to comply with the terms of

1 probation the board shall serve the licensee with a written notice that
2 states that the licensee is subject to a formal hearing based on the
3 information considered by the board at the formal interview and any other
4 acts or conduct alleged to be in violation of this chapter or rules adopted
5 by the board pursuant to this chapter including noncompliance with the term
6 of probation, a consent agreement or a stipulated agreement.

7 6. Enter into an agreement with the doctor to restrict or limit the
8 doctor's practice or medical activities in order to rehabilitate, retrain or
9 assess the doctor, protect the public and ensure the physician's ability to
10 safely engage in the practice of medicine.

11 H. If the board finds that the information provided in subsection A
12 or G of this section warrants suspension or revocation of a license issued
13 under this chapter, it shall initiate formal proceedings pursuant to title
14 41, chapter 6, article 10.

15 I. In a formal interview pursuant to subsection G of this section or
16 in a hearing pursuant to subsection H of this section, the board in addition
17 to any other action may impose a civil penalty in the amount of not less than
18 three hundred dollars nor more than ten thousand dollars for each violation
19 of this chapter or a rule adopted under this chapter.

20 J. An advisory letter is a public document.

21 K. Any doctor of medicine who after a formal hearing is found by the
22 board to be guilty of unprofessional conduct, to be mentally or physically
23 unable safely to engage in the practice of medicine or to be medically
24 incompetent is subject to censure, probation as provided in this section,
25 suspension of license or revocation of license or any combination of these,
26 including a stay of action, and for a period of time or permanently and under
27 conditions as the board deems appropriate for the protection of the public
28 health and safety and just in the circumstance. The board may charge the
29 costs of formal hearings to the licensee who it finds to be in violation of
30 this chapter.

31 L. If the board acts to modify any doctor of medicine's prescription
32 writing privileges the board shall immediately notify the state board of
33 pharmacy of the modification.

34 M. If the board, during the course of any investigation, determines
35 that a criminal violation may have occurred involving the delivery of health
36 care, it shall make the evidence of violations available to the appropriate
37 criminal justice agency for its consideration.

38 N. If the board's chairperson determines that a backlog of complaints
39 exists the chairperson may divide the board into two six member review
40 committees. Each of these committees shall select a chairperson. Four
41 members constitute a quorum for each committee. The committees shall review
42 complaints not dismissed by the executive director and may take the following
43 actions:

44 1. Dismiss the complaint if a committee determines that it is without
45 merit.

1 2. Issue an advisory letter. The licensee may file a written response
2 with the board within thirty days after the licensee receives the advisory
3 letter.

4 3. Refer the matter for further review by the full board.

5 O. All monies collected from civil penalties paid pursuant to this
6 chapter shall be deposited in the state general fund.

7 P. Notice of a complaint and hearing is effective by a true copy of
8 it being sent by certified mail to the doctor's last known address of record
9 in the board's files. Notice of the complaint and hearing is complete on the
10 date of its deposit in the mail. The board shall begin a formal hearing
11 within one hundred twenty days of that date.

12 Q. A physician who submits an independent medical examination pursuant
13 to an order by a court ~~or the industrial commission~~ is not subject to a
14 complaint for unprofessional conduct unless a complaint is made or referred
15 by a court ~~or the industrial commission~~ to the board. For purposes of this
16 subsection, "independent medical examination" means a professional analysis
17 of medical status based on a person's past and present physical and
18 psychiatric history and conducted by a licensee or group of licensees on a
19 contract basis for a court ~~or for the industrial commission~~.

20 R. The board may accept the surrender of an active license from a
21 person who admits in writing to any of the following:

- 22 1. Being unable to safely engage in the practice of medicine.
23 2. Having committed an act of unprofessional conduct.
24 3. Having violated this chapter or a board rule.

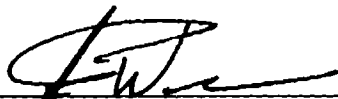
APPROVED BY THE GOVERNOR APRIL 23, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2001.

Passed the House February 6, 2001,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting


Speaker of the House


Chief Clerk of the House

Passed the Senate April 11, 2001,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting


President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2090

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 17, 2001,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting

[Signature]
Speaker of the House
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17 day of April, 2001,

at 11:06 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 23 day of

April, 2001,

at 9:26 o'clock A M.

[Signature]
Governor of Arizona

H.B. 2090

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of April, 2001,

at 4:45 o'clock P M.

[Signature]
Secretary of State